

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD WILSON,

NO. CIV. S-04-633 LKK/CMK

Plaintiff,

v. _____

PIER 1 IMPORTS (US), INC;
and MELLON/PIER 1 PROPERTIES
LIMITED PARTNERSHIP I,

Defendants.

STATUS (PRETRIAL SCHEDULING) CONFERENCE

A Status (Pretrial Scheduling) Conference was held in Chambers on July 15, 2005. SCOTT HUBBARD appeared as counsel for plaintiff; ROLAND JUAREZ and CHRISTINE SAMSEL appeared as counsel for defendants. All dates heretofore set are VACATED and the following dates are SET:

MOTION HEARING SCHEDULES

Based on the court's reopening of law and motion, plaintiff's motion for summary judgment is dropped from calendar, to be refiled in its entirety or re-noticed for hearing prior to the close of law

1 and motion herein established.

2 All law and motion except as to discovery is left open, save
3 and except that it shall be conducted so as to be completed by
4 December 15, 2005. The word "completed" in this context means that
5 all law and motion matters must be **heard** by the above date.
6 Because this date is not necessarily a date previously set aside
7 for law and motion hearings, it is incumbent upon counsel to
8 contact this court's courtroom deputy, Ana Rivas at (916) 930-4133,
9 sufficiently in advance so as to ascertain the dates upon which law
10 and motion will be heard and to properly notice its motion for
11 hearing before that date. Counsel are cautioned to refer to Local
12 Rule 78-230 regarding the requirements for noticing such motions
13 on the court's regularly scheduled law and motion calendar.
14 **Opposition or statement of non-opposition to all motions shall be**
15 **filed not later than 4:30 p.m. fourteen (14) days preceding the**
16 **hearing date, or by proof of service by mail not less than**
17 **seventeen (17) days preceding the hearing date.** This paragraph
18 does not preclude motions for continuances, temporary restraining
19 orders or other emergency applications, and is subject to any
20 special scheduling set forth in the "MISCELLANEOUS PROVISIONS"
21 paragraph below.

22 At the time of filing a motion, opposition, or reply, counsel
23 are directed to email a copy in word processing format to the
24 Judge's Assistant, Tim Hinkle, at thinkle@caed.uscourts.gov.

25 The parties should keep in mind that the purpose of law and
26 motion is to narrow and refine the legal issues raised by the case,

1 and to dispose of by pretrial motion those issues that are
2 susceptible to resolution without trial. To accomplish that
3 purpose, the parties need to identify and fully research the issues
4 presented by the case, and then examine those issues in light of
5 the evidence gleaned through discovery. If it appears to counsel
6 after examining the legal issues and facts that an issue can be
7 resolved by pretrial motion, counsel are to file the appropriate
8 motion by the law and motion cutoff set forth supra.

9 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
10 MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL ORDINARILY BE
11 VIEWED AS A WAIVER AT THE TIME OF PRETRIAL. COUNSEL ARE CAUTIONED
12 THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE BEEN TENDERED TO THE COURT
13 BY PRETRIAL MOTION MUST BE RESOLVED BY THE COURT AFTER LAW AND
14 MOTION CUTOFF, FOR INSTANCE WHERE THE ISSUE IS JURISDICTION,
15 SUBSTANTIAL SANCTIONS WILL BE LEVIED AGAINST COUNSEL WHO FAIL TO
16 TIMELY FILE AN APPROPRIATE MOTION.

17 Counsel are further reminded that motions in limine are
18 procedural devices designed to address the admissibility of
19 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH
20 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF MOTIONS
21 IN LIMINE AT THE TIME OF TRIAL.

22 **DISCOVERY**

23 No modifications of the discovery requirements found in the
24 Federal Rules is ordered.

25 All discovery is left open, save and except that it shall be
26 so conducted as to be completed by October 15, 2005. The word

1 "completed" means that all discovery shall have been conducted so
2 that all depositions have been taken and any disputes relative to
3 discovery shall have been resolved by appropriate order if
4 necessary and, where discovery has been ordered, the order has been
5 complied with. Motions to compel discovery must be noticed on the
6 magistrate judge's calendar in accordance with the local rules of
7 this court and so that such motions will be heard not later than
8 September 15, 2005. All experts witnesses have been previously
9 designated.

10 **FINAL PRETRIAL CONFERENCE**

11 The Final Pretrial Conference is **SET** for March 13, 2006, at
12 1:30 p.m. Counsel are cautioned that counsel appearing for
13 Pretrial will in fact try the matter.

14 Counsel for all parties are to be fully prepared for trial at
15 the time of the Pretrial Conference, with no matters remaining to
16 be accomplished except production of witnesses for oral testimony.
17 Counsel are referred to Local Rules 40-280 and 16-281 relating to
18 the contents of and time for filing Pretrial Statements. In
19 addition to those subjects listed in Local Rule 16-281(b), the
20 parties are to provide the court with a plain, concise statement
21 which identifies every non-discovery motion tendered to the court,
22 and its resolution. A FAILURE TO COMPLY WITH LOCAL RULES 40-280
23 AND 16-281 WILL BE GROUNDS FOR SANCTIONS.

24 The parties shall file Separate Pretrial Statements, the
25 contents and timing of which are set forth in Local Rule 16-281,
26 except that the parties are to prepare a JOINT STATEMENT with

1 respect to the undisputed facts and disputed factual issues of the
2 case. See Local Rule 16-281(b) (3), (4), and (6). The parties are
3 reminded to include in their joint statement all disputed and
4 undisputed special factual information as required by Local Rule
5 16-281(b) (6).

6 The undisputed facts and disputed factual issues are to be set
7 forth in two separate sections. In each section, the parties
8 should identify first the general facts relevant to all causes of
9 action. After identifying the general facts, the parties should
10 then identify those facts which are relevant to each separate cause
11 of action. In this regard, the parties are to number each
12 individual fact or factual issue. Where the parties are unable to
13 agree as to what factual issues are properly before the court for
14 trial, they should nevertheless list in the section on "DISPUTED
15 FACTUAL ISSUES" all issues asserted by any of the parties and
16 explain by parenthetical the controversy concerning each issue.
17 Each individual disputed fact or factual issue shall include the
18 following introductory language: "Whether or not" The
19 parties should keep in mind that, in general, each fact should
20 relate or correspond to an element of the relevant cause of action.
21 Notwithstanding the provisions of Local Rule 16-281, the Joint
22 Statement of Undisputed Facts and Disputed Factual Issues is to be
23 filed with the court concurrently with the filing of plaintiff's
24 Pretrial Statement. If the case is tried to a jury, the undisputed
25 facts will be read to the jury.

26 Pursuant to Local Rule 16-281(b) (10) and (11), the parties are

1 required to provide in their Pretrial Statements a list of
2 witnesses and exhibits that they propose to proffer at trial, no
3 matter for what purpose. These lists shall not be contained in the
4 Pretrial Statement itself, but shall be attached as separate
5 documents to be used as addenda to the Final Pretrial Order.
6 Plaintiff's exhibits shall be listed numerically; defendant's
7 exhibits shall be listed alphabetically. In the event that the
8 alphabet is exhausted, defendant's exhibits shall be marked "2A-2Z,
9 3A-3Z, etc." The Pretrial Order will contain a stringent standard
10 for the proffering of witnesses and exhibits at trial not listed
11 in the Pretrial Order. Counsel are cautioned that the standard
12 will be strictly applied. On the other hand, the listing of
13 exhibits or witnesses which counsel do not intend to call or use
14 will be viewed as an abuse of the court's processes.

15 Pursuant to Local Rule 16-281(b)(12), a party is required to
16 provide a list of all answers to interrogatories and responses to
17 requests for admission that the party expects to offer at trial.
18 This list should include only those documents or portions thereof
19 which the party expects to offer in its case-in-chief. Unless
20 otherwise barred by a rule of evidence or order of this court, the
21 parties remain free to tender appropriate discovery documents
22 during trial for such purposes as, but not limited to, impeachment
23 or memory refreshment.

24 Pursuant to Local Rule 16-281(b)(8), the parties' Pretrial
25 Statements shall contain a "statement of legal theory, etc." Each
26 party shall commence this section by specifying as to each claim

1 whether federal or state law governs, and if state law, the state
2 whose law is applicable.

3 Counsel are also reminded that, pursuant to Fed. R. Civ. P.
4 16, it will be their duty at the Pretrial Conference to aid the
5 court in (a) formulation and simplification of issues and the
6 elimination of frivolous claims or defenses; (b) settling of facts
7 which should be properly admitted; and (c) the avoidance of
8 unnecessary proof and cumulative evidence. Counsel must prepare
9 their Pretrial Statements, and participate in good faith at the
10 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO
11 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include
12 monetary sanctions, orders precluding proof, eliminations of claims
13 or defenses, or such other sanctions as the court deems
14 appropriate.

15 **TRIAL SETTING**

16 Trial is **SET** for June 13, 2006, at 10:30 a.m. Trial will be
17 by the court sitting without jury.

18 **MISCELLANEOUS PROVISIONS**

19 The parties are reminded that pursuant to Fed. R. Civ. P.
20 16(b), the Status (pretrial scheduling) Order **shall not be modified**
21 **except by leave of court upon a showing of good cause.** Counsel are
22 cautioned that changes to any of the scheduled dates will
23 necessarily result in changes to all other dates. Thus, even where
24 good cause has been shown, the court will not grant a request to
25 change the discovery cutoff date without modifying the pretrial and
26 trial dates.

1 **Agreement by the parties pursuant to stipulation does not**
2 **constitute good cause. Nor does the unavailability of witnesses**
3 **or counsel, except in extraordinary circumstances, constitute good**
4 **cause.**

5 The parties are reminded of their continuing obligation to
6 supplement their statements relative to the identification of
7 parent corporations and any publicly held company that owns 10% or
8 more of the party's stock within a reasonable time of any change
9 in the information.

10 The parties are admonished that they are not to cite or refer
11 to any of the quotations inscribed in the pavers on the front plaza
12 of the United States Courthouse in any written or oral presentation
13 to the court or a jury.

14 There appear to be no other matters presently pending before
15 the court that will aid the just and expeditious disposition of
16 this matter.

17 IT IS SO ORDERED.

18 DATED: July 27, 2005.

19 /s/Lawrence K. Karlton
20 LAWRENCE K. KARLTON
21 SENIOR JUDGE
22 UNITED STATES DISTRICT COURT
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